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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

20 Cr. 411 (RA)

5 ZISHE ABRAHAM,

6 Sentence

7 Defendant.

-----x

8 New York, N.Y.
9 September 18, 2024
10 10:05 a.m.

11 Before:

12 HON. RONNIE ABRAMS,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

BY: JILAN KAMAL

Assistant United States Attorney

18 MEISTER SEELIG & FEIN LLP

Attorneys for Defendant

19 BY: ILANA HARAMATI

HENRY E. MAZUREK

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(Case called)

THE DEPUTY CLERK: Counsel, please, state your name for the record.

MS. KAMAL: Good morning, your Honor. Jilan Kamal, on behalf of the United States, and also here in court today is an attorney representing the victim, Amazon. That is Sarah Anne Baugh from the firm of Davis Wright Tremaine.

THE COURT: Good morning to both of you. I hope you're feeling better.

MS. HARAMATI: Good morning, your Honor. Ilana Haramati and Henry Mazurek, on behalf of Zishe Abraham, who is seated to my right.

THE COURT: Good morning to all.

This matter is on for sentencing. Mr. Abraham pled guilty in October to the sole count of the superseding information, conspiring to commit wire fraud, in violation of 18 United States Code, Section 371.

All right. Let me just confirm that you've received the presentence investigation report; Mr. Abraham's sentencing memorandum; the government's sentencing memorandum dated June 24, September 10, and the 16th; as well as the victim impact statement from Amazon. Do you all have all of that?

MS. HARAMATI: Yes, your Honor.

THE COURT: Have all been placed on the docket? If not, I just want to ensure that they are.

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1 MS. HARAMATI: Your Honor, all of the defense
2 submissions have been placed on the docket with some
3 redactions, in accordance with the ECF rules.

4 THE COURT: All right. Fine. Thank you.

5 MS. KAMAL: With respect to the government's
6 submissions regarding intended loss, which were provided
7 pursuant to the Court's order, the government understood the
8 Court's order to be that those letters were to be provided to
9 the defendants.

10 THE COURT: OK.

11 MS. KAMAL: Happy to file them publicly if necessary.

12 THE COURT: Is there any reason they can't be filed
13 publicly?

14 MS. KAMAL: No, your Honor. I simply understood that
15 the Court was directing the parties to basically confer.

16 THE COURT: Why don't we put those on the record as
17 well.

18 Why don't we begin by discussing the presentence
19 report that, as you all know, is prepared by the probation
20 department. Counsel, have you reviewed the presentence report
21 and discussed it with your client?

22 MS. HARAMATI: Yes, Judge.

23 THE COURT: All right. Do you have any objections to
24 the presentence report?

25 MS. HARAMATI: No, your Honor.

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1 THE COURT: All right. Mr. Abraham, have you had
2 enough time and opportunity to review the presentence report
3 and discuss it with your attorneys?

4 THE DEFENDANT: Yes.

5 THE COURT: Does the government have any objections?

6 MS. KAMAL: No, your Honor.

7 THE COURT: All right. I am adopting the factual
8 findings in the report. The presentence report will be made
9 part of the record in this matter and placed under seal. If an
10 appeal is taken, counsel on appeal may have access to the
11 sealed report without further application to the Court.

12 Mr. Abraham, when you pled guilty, the federal
13 sentencing guidelines were discussed with you. Do you remember
14 that? They're in a book that's like this. Do you remember
15 that? Yes.

16 So, as you know, and for all of you who are here that
17 may not know, they are a set of rules. They're published by
18 the United States Sentencing Commission, and they're designed
19 to guide judges when they impose sentence. At one time, they
20 were mandatory; meaning judges were required to follow the
21 guidelines. They're no longer mandatory; meaning the judges
22 don't need to follow them, but they still need to consider them
23 and properly calculate them.

24 So I want to start by confirming — well, actually,
25 let me back up.

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1 So, as I understand it, consistent with the plea
2 agreement, the parties agreed that the guidelines range here is
3 30 to 37 months. That said, the Court nonetheless has the
4 obligation to independently calculate the guidelines range, as
5 I noted in the order asking for your positions with respect to
6 intended loss.

7 So I'm prepared to rule on intended loss and how I
8 calculate the guidelines. I will absolutely keep in mind that
9 you have all entered into a plea agreement that you both intend
10 to stick to, but does anyone want to be heard with respect to
11 the intended loss amount or the guidelines calculation beyond
12 what the government put in its letters?

13 MS. HARAMATI: I do, your Honor, just briefly.

14 THE COURT: Yes, please. Sure.

15 MS. HARAMATI: Look, your Honor, appreciate all of the
16 careful work everybody has done here in order to try to be as
17 precise as possible in coming to a reasonable estimate as
18 required under the guidelines.

19 THE COURT: Yes.

20 MS. HARAMATI: In the government's last two
21 submissions, Ms. Kamal calculated that the intended loss is
22 about 3.6 million, which is just a touch over the \$3.5 million
23 threshold. That's the threshold negotiated in the plea
24 agreement.

25 THE COURT: Right.

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1 MS. HARAMATI: Look, there have been — that was based
2 on the most recent version of this order and payment
3 spreadsheet that Amazon, I guess, produced to the government.
4 In the course of the four years of this litigation, we've
5 received a lot of versions of this spreadsheet, of other
6 spreadsheets, and because the guidelines only require a
7 reasonable estimate and not exact precision, and looking at the
8 different versions of the spreadsheets, it's very difficult —
9 I sort of think it's impossible, given what I know about these
10 spreadsheets — to say with certainty that every order, every
11 legitimate order, is in any given one of the spreadsheets,
12 given the myriad of different sources of information we've
13 received over the last four years.

14 So I think that, because the guidelines only require a
15 reasonable estimate and given what I know about the imprecision
16 of any one of these spreadsheets, I think Mr. Abraham should
17 get the benefit of the doubt on the question of whether, you
18 know, is the intended loss just over the \$3.5 million
19 threshold? Is it just under the \$3.5 million threshold? Since
20 we're so close to that threshold, I think a reasonable estimate
21 would be a 16-point enhancement, 1 1/2 to 3 1/2 rather than the
22 above \$3.5 million threshold that the government put in its
23 letter.

24 THE COURT: I don't disagree with you if I'm analyzing
25 this in terms of the 3553(a) factors, but I do have this

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1 obligation to independently calculate the guidelines, and I do
2 agree that the government's calculation, consistent with
3 Exhibit 4, is reasonable. So I'm going to read my ruling on
4 that, but I'm going to consider not only your argument but also
5 the fact that, as I noted earlier, the parties stipulated to
6 the lower guidelines range as part of the plea agreement, and
7 that will be a big factor that I consider when balancing the
8 factors.

9 Let me ask you this: Are you objecting to my reliance
10 on intended loss? Do you want me to make a ruling on that?

11 MS. HARAMATI: Look, your Honor, I know that you've
12 already considered this in the context of Yoel Abraham's
13 sentencing.

14 THE COURT: Yes.

15 MS. HARAMATI: The reason that the parties agreed to
16 use gain as opposed to loss, intended loss or actual loss, is
17 exactly because of the imprecision of these spreadsheets. So
18 to the extent that that, I think, persists to this day, I would
19 just respectfully disagree that intended loss is the right
20 measure, and I think the gain, the alternate means of the gain,
21 is the more correct measure, just because of the same
22 imprecision that I just raised.

23 THE COURT: Does the government want to be heard at
24 all?

25 MS. KAMAL: Just very briefly, your Honor.

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1 As you noted from the outset, the government stands by
2 the guidelines analysis and the guidelines range set forth in
3 the plea agreement. One thing that I just think might help the
4 record and the Court to understand here is that the calculation
5 of the gain and the parties' use of the gain to basically
6 negotiate the plea agreements reflected, fair to say, the
7 knowledge of the parties and the victim at a moment in time.
8 And while it is certainly true, as defense counsel points out,
9 that there are multiple spreadsheets that contain relevant
10 information to calculating gain and loss, there is no single
11 spreadsheet that contains the world of data that the Court or
12 the parties might consider.

13 I don't think it is fair to say that the spreadsheets
14 themselves are imprecise. With respect to Exhibit 4, which the
15 Court relied on in calculating the intended loss for defendant
16 Yoel Abraham, the parties until very recently were operating
17 from the one version of that spreadsheet ever produced. And as
18 the Court is aware, in the government's most recent letter, the
19 government recently learned that some data for another
20 defendant, not Zishe Abraham, had been omitted, but other than
21 that, there's only been two versions of that spreadsheet in the
22 pendency of this matter.

23 So, respectfully, I disagree with counsel when she
24 says that the spreadsheets themselves as a factual matter are
25 imprecise and that as a factual can't be relied on to calculate

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1 the gain here. Now, if defense counsel has an argument about
2 the propriety of using intended verses actual loss generally,
3 the Court's already ruled, and the Court knows the government's
4 position there. I just want to make sure that record's clear
5 on that point.

6 THE COURT: I do find Exhibit 4 to be reliable with
7 respect to defendant's intended loss. I'm going to read a
8 ruling with respect to intended loss so the record is clear,
9 but, again, I'm going to consider your argument and, as I
10 noted, your agreement and the plea agreement when I ultimately
11 sentence Mr. Abraham.

12 So beginning with the loss enhancement, I find it is
13 appropriate to use the intended loss amount. Pursuant to
14 2B1.1, the defendant's offense level is increased where loss
15 exceeds certain enumerated figures. The commentary to 2B1.1
16 explains that loss is the greater of actual loss or intended
17 loss. Indeed, where the intended loss is greater than actual
18 loss, the larger intended loss is a better measure for the
19 defendant's culpability than is the actual loss. The Second
20 Circuit, moreover, recently clarified that it continues to
21 defer to the loss application note even after the Supreme
22 Court's decision in *Kisor v. Wilke*, and that's in the *Rainford*
23 case.

24 Intended loss means the pecuniary harm that the
25 defendant purposely sought to inflict. That's application note

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1 3(A)(ii) to 2B1.1, and it includes intended pecuniary harm that
2 would have been impossible.

3 A district court's factual findings relating to loss
4 must be established by a preponderance of the evidence.
5 Accordingly, the Court's findings must be grounded in the
6 evidence and not derived from mere speculation. Such evidence
7 need not, however, establish loss with absolute precision. It
8 need only permit the district court to make a reasonable
9 estimate of the loss given the available information.

10 If the loss reasonably cannot be determined, the
11 commentary to 2B1.1 provides that the Court shall use the gain
12 that resulted from the offense as an alternative measure of
13 loss. Although the parties agreed in the plea agreement that
14 loss to the victim reasonably could not be determined, as I
15 said, I disagree. I've reviewed the materials in this case. I
16 find the Government Exhibit 4 is reliable. The Second Circuit
17 has held that a district court may make a reasonable estimate
18 by extrapolating the average amount of loss from known data and
19 applying that average to transactions where the exact amount of
20 loss is unknown. Here, I find that using Exhibit 4 to
21 determine intended loss is more precise than extrapolating the
22 average amounts of loss.

23 In particular, Exhibit 4 reflects the amount of goods
24 Amazon originally ordered from defendant, the amount of goods
25 that defendant shipped, and the cost differential, which is

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1 calculated by subtracting the amount Amazon ordered from the
2 amount that the defendant shipped. The commentary to the
3 guidelines provides that the loss amount should be reduced by
4 credits against loss, which include services rendered by the
5 defendant to the victim before the offense was detected. I
6 find that subtracting the amount of goods Amazon ordered from
7 the amount shipped provides credits for the services rendered.

8 However, I don't find any other credits to be
9 appropriate here. See, for example, the *Mitan* case, in which
10 the Third Circuit held that perpetrators of fraudulent schemes
11 are not entitled to credits against loss for payments that were
12 made to perpetuate their schemes. I'll note that Exhibit 4
13 does not take into account what Amazon actually paid the
14 defendant. So although I find it to be reliable with respect
15 to defendant's intended loss, I'm not relying on it to show
16 actual losses.

17 I'll also note that the Excel sheet takes into account
18 instances where defendant shipped less than the ordered amount.
19 This actually works in defendant's favor given that these
20 instances were to decrease the overall cost differential. The
21 total cost to Amazon comes to \$3,618,304.87. I find by a
22 preponderance of the evidence that this figure is a reasonable
23 estimate of defendant's intended loss.

24 With regard to the remaining guidelines calculation, I
25 agree with the plea agreement. I'll thus summarize my

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1 guidelines calculation.

2 So the base offense level is 6 pursuant to
3 2B1.1(a)(2). Defendant's intended loss is just over the
4 \$3.5 million threshold, as I just noted, so the level is
5 increased by 18 pursuant to 2B1.1(b)(1)(J). I agree with the
6 parties that the offense involved sophisticated means, and so
7 the offense level is further increased by 2, pursuant to
8 2B1.1(b)(2). The offense level is then decreased by 2 pursuant
9 to 4C1.1 and further decreased by 3 pursuant to 3E1.1(a) and
10 (b). So thus the total offense level is 21.

11 With regard to the defendant's criminal history, he
12 has no criminal history points. He thus has a criminal history
13 of I. So, for those reasons, I find that his offense level's
14 21, his criminal history category is I, and his recommended
15 guideline sentence is 37 to 46 months. So, as I said, I'm
16 cognizant that in the plea agreement the parties agreed to the
17 lower range of 30 to 37 months, and I'm going to take that into
18 account.

19 In any event, the range is only advisory, so courts
20 can impose a sentence outside of that range based on one of two
21 legal concepts: a departure or a variance. A departure allows
22 for a sentence outside of the advisory range based on some
23 provisions in the guidelines themselves. In the plea
24 agreement, both parties agree that no departure from the
25 guidelines range was warranted, but I have of course found a

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1 slightly higher guidelines range.

2 So, just to be clear, neither side is seeking a
3 departure, although Mr. Abraham is seeking a variance pursuant
4 to 3553(a). Is that correct?

5 MS. HARAMATI: Yes, your Honor.

6 THE COURT: In any event, I have considered whether
7 there's an appropriate basis for departure from the advisory
8 range within the guideline system, and while recognizing that I
9 have the authority to depart, I don't find any grounds
10 warranting departure. I also have the power to impose a
11 non-guidelines sentence based on what we call a variance, and
12 as I said a moment ago, I'm going to take your plea agreement
13 into account as well as all the other factors that we'll talk
14 about shortly.

15 So, first, does the government wish to be heard with
16 respect to sentencing?

17 MS. KAMAL: Briefly, your Honor, although I am largely
18 ready to rely on the rather substantial submission that's
19 already been provided to the Court.

20 As the Court has recognized in the sentencing of
21 Mr. Abraham's codefendant, this was not a one-off offense. It
22 was pervasive, it was of long-standing, and the defendants were
23 persistent. The text messages between Mr. Abraham and his
24 codefendants reveal that the intent here was simple: To bilk
25 Amazon for as much money as the defendants could as quickly as

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1 they could without, quite frankly, any — without any real care
2 for the impact.

3 That said, in reviewing those text messages, the
4 government can't help but to notice the difference in attitudes
5 and commentary by the various defendants. And here, as noted
6 in the government's submission, Mr. Zishe Abraham did evince
7 uneasiness with the scheme. To be clear, he continued to
8 pursue it. He did so with energy and creativity, but —

9 THE COURT: It suggests he's less likely to recidivate
10 because he realizes the severity of his conduct.

11 MS. KAMAL: Precisely, your Honor.

12 With respect to specific deterrence, here, the
13 government would submit that, relative to his codefendant,
14 Mr. Yoel Abraham, the sentence has less of a need to
15 specifically defer Mr. Zishe Abraham. That said, the
16 government's arguments regarding general deterrence bear out.
17 It was a scheme of long duration, it created considerable harm,
18 and as reflected in the intended loss here, it was a serious
19 offense that warrants a sentence of imprisonment.

20 With respect to the 3553(a) factors, the government
21 can only observe what it observed also with respect to Mr. Yoel
22 Abraham. Mr. Zishe, throughout both the offense and since
23 appears to be remarkably dedicated to his family and to his
24 community. Those are wonderful supports and great direction
25 for his energy, but his good works in the community and his

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1 support of his family were bearing on him during the offense
2 and still do now. And the government submits that that alone
3 should not mitigate or support the conclusion that a
4 non-incarceratory sentence is appropriate here. The government
5 submits that it is not.

6 But unless the Court has specific questions —

7 THE COURT: I just want to ask one question about
8 relative culpability to avoid unwarranted sentencing
9 disparities. So I understand he is the second to lowest in
10 terms of the intended loss amount if we're looking at that,
11 right?

12 MS. KAMAL: That's correct, your Honor.

13 THE COURT: But as you just noted — and I appreciate
14 the government recognizing this and highlighting it — not only
15 does he feel genuinely remorseful now, but he had that unease
16 when he was engaging in this conduct, which I do think bears on
17 the likelihood of recidivism to his favor.

18 Are there any other factors you think I should
19 consider with respect to relative culpability between the four?

20 MS. KAMAL: I think, with respect to the offense
21 conduct, Mr. Zishe Abraham's overwhelming misconduct considered
22 overshipping but also unit manipulation. And as the Court's
23 aware, but I will make clear for the record here, there were
24 various flavors of deceptive practices here. There was
25 substituting the product actually ordered for an entirely

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1 different product of lower value. There was fulfilling the
2 order with the product that had been ordered but manipulating
3 how that product was packaged. So if Amazon had ordered ten
4 widgets for \$10, instead manipulating the product pages so that
5 the defendants were shipping to Amazon one widget for \$10 and
6 then overshipping that as well. Then, finally, there was just
7 pure overshipping, which was accomplished in many different
8 ways, but didn't involve either unit or product substitution.

9 It bears noting that Mr. Zishe Abraham did not engage
10 in what was probably the worst version of the offense conduct
11 here. He didn't engage in the wholesale product substitution
12 that we saw with respect — that was chiefly characterized,
13 frankly, by Mr. Yoel Abraham's conduct. He did engage in unit
14 manipulation to a significant extent, as reflected in the
15 victim impact statement. But with respect to his offense
16 conduct, I think it does bear noting that he didn't go to the
17 max, so to speak, when it came to his efforts to defraud the
18 company.

19 THE COURT: How do you view him in terms of relative
20 culpability relative to Heshl, for example?

21 MS. KAMAL: They are similarly situated, I would say,
22 your Honor. It would be hard based — the main distinguishing
23 characteristic, I would say, between Mr. Heshl Abraham and
24 Mr. Zishe Abraham would be the attitudes and their intent
25 reflected in the text messages, at least from the government's

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1 point of view. I want to say, without misspeaking, that they
2 are fairly close when it comes to their intended loss figures,
3 but I want to say that Mr. Zishe Abraham's intent, as reflected
4 in his discussions with his codefendants, evinces less of a
5 likelihood to engage in this conduct again in the future.

6 THE COURT: Lastly, I understand that there's a
7 representative of Amazon here. I read the letter, of course,
8 but would she like to be heard today?

9 MS. KAMAL: No, your Honor, unless there are specific
10 questions.

11 THE COURT: No, I don't think so. Thank you.

12 All right. Ms. Haramati, would you like to be heard?

13 MS. HARAMATI: Yes, Judge. Thank you.

14 Your Honor, apart from the offense conduct that the
15 government just addressed, the Court — obviously, the Court
16 knows this better than I do — has to consider many factors to
17 determine what's a sufficient but not greater than necessary
18 sentence for Zishe Abraham, not just for the crime that he
19 committed but for the person that he is and, frankly, the
20 person that he has become in the last five or six years since
21 the offense conduct ended, which is a really long period of
22 time in his adult life. He was 26 years old at the time of the
23 offense. He's now the father of two children. He has myriad
24 family responsibilities.

25 Looking at the 3553(a) factors beyond the offense

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1 conduct itself, the most important factor that I want to
2 address is his personal history and characteristics, especially
3 how he has conducted himself and how he has reoriented his
4 entire life in the last several years, and these are not just,
5 as Ms. Kamal said, good works in the community. It's really a
6 total shift in focus and who he is and what he prioritizes in
7 his life.

8 What I think is clear — and I want to put a little
9 bit of more detail in this — what I think is clear from his
10 record over the last five-plus years is that his conduct these
11 last several years, his life reorientation, show that he's
12 already met most or all of the sentencing goals enumerated in
13 Section 3553(a). He has rehabilitated himself. That goes to
14 specific deterrence. He has accepted responsibility, he has
15 accepted social opprobrium, and he has built a law-abiding and
16 respectful life for himself since ceasing the offense conduct.
17 And I think that all that Zishe has achieved — and I want to
18 give a little detail on each of these themes — all that Zishe
19 has achieved really demonstrates that a time-served sentence is
20 really all that is necessary for this person who has stood
21 before this Court over the last four years, facing his criminal
22 conduct, and taken real concrete strides to make his life
23 totally different than what it was at the time of the offense
24 conduct.

25 Zishe has expressed remorse. The Court, I think, saw

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1 that in his letter that we submitted along with his sentencing
2 memo, and I anticipate that your Honor will hear from him
3 directly today to understand the depth of his remorse. But
4 it's not just words for him; it's a track record for what he
5 has done. That makes Zishe a positive role model. His conduct
6 is an example for what people in his position, people who have
7 made mistakes and accepted responsibility for those mistakes,
8 what we as a society want people in his position to do. So I
9 think that, beyond just giving him credit or mitigation, I
10 think that his track record and what that reflects and how we
11 as a society should promote doing what Zishe has done also goes
12 to general deterrence and respect for the law. Because people
13 looking at Zishe can see a model for how to act after
14 committing an offense and how to make real progress — and how
15 that will, frankly, inure to a person's benefit if that is
16 considered at the time of sentencing — I think promotes that
17 sort of positive rehabilitation in a way that a harsh custodial
18 sentence really does not.

19 So Zishe has invested in really three things, and I
20 want to spend a little bit of time elaborating on what those
21 three things are. The first and foremost is that he has just
22 poured his energy and his attention into his family. Your
23 Honor, Zishe has two young children: Devory, who's 6, and
24 Shimon, who is 4. Zishe's wife, Zeldy, who is here in court
25 today along with a number of family members — her mother, many

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1 of Zeldy's brothers are here, some of Zishe's family members
2 are here, community members are here — and both Zeldy and
3 family members, as well as neighbors and community members,
4 remark in their letters to the Court and provide illustrations
5 not just that Zishe is a good father, he's really a superlative
6 father. He's the kind of father who gives special gentle care
7 to each of his children individually, and you can see from the
8 anecdotes in the letters how Mr. Abraham's children rely on him
9 for that. They don't take it for granted. They wait for him
10 at the windowsill every single day when they think he's coming
11 home from work because they know that they can rely that their
12 father will be there every single day at the same time to help
13 them with their homework, to get them ready for bed. And he
14 relishes that time with them. He spends time with them in
15 their daily routines in the kind of way that is just
16 irreplaceable.

17 We have what I think is notable. It's not just that
18 the family members discuss Zishe's family commitment, but
19 Zishe's business associates also remark in their letters about
20 his family commitments. They note that he makes his work
21 schedule around his family commitments, not the other way
22 around. He tells people: I can't come to that late meeting.
23 I got to go home to my kids. They're waiting for me.

24 One of his business associates, Pinchas Braver, he
25 wrote in his letter what I think is a prime example of this.

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1 He told the Court:

2 "One evening I knew that Zishe was in the middle of an
3 important project and I noticed that Zishe left at the same
4 time as he did every other day, so I asked him where was he
5 going. Zishe told me he needed to go home because his kids
6 were waiting at the window looking out for him, and it was
7 clear that he really cares about his kids and didn't want to
8 keep them waiting."

9 Zishe is a real father, and he's the kind of father
10 who, if he were absent from his children's lives, even for a
11 small amount of time, would create a palpable void in their
12 young lives.

13 He's also a fantastic husband and a fantastic partner
14 to his wife Zeldy. They share their family responsibilities.
15 There's no primary parent in the Abraham house. Zishe and
16 Zeldy work together to give their all to both of their children
17 every single day.

18 And Zishe is the kind of husband who also
19 independently encourages his wife to pursue her own goals. She
20 wrote the Court about how she recently completed training as a
21 head start teacher, and now she is also able to independently
22 achieve the kinds of professional success and give back to the
23 community through her profession in a way that she wouldn't be
24 able to without Zishe's encouragement and, frankly, without his
25 partnership in their home. He does grocery shopping. He does

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1 the bills. He's there every single day just to split the home
2 responsibilities so that they can each independently thrive in
3 their own lives while giving the kind of care to their children
4 that the kids need. Zeldy is really clear with the Court in
5 her letter. She doesn't know how she would cope if Zishe
6 wasn't around with all of the responsibilities that she has.
7 Zishe is just — he's the linchpin of his home.

8 Especially because so many of Zeldy's family members
9 are here, including, I think, most notably, her elderly mother
10 Esther Altman who wrote a really, I think, beautiful and kind
11 of unusual sort of letter to the Court about how much Zishe
12 really takes care of her, especially in the last couple of
13 years since — since 2019 and the pandemic, she's had a number
14 of health issues, and each and every time Zishe doesn't just
15 send food or call or come visit, he opens his home to her. He
16 reorganizes his home so that if she has trouble walking — she
17 tells of a time that she had surgery in 2019 where she couldn't
18 walk. And she lives in a building with a number of flights of
19 stairs, so she came to Zishe and Zeldy's home. They
20 reorganized their entire downstairs so that way she could have
21 a place on the main floor without having to go up any stairs,
22 not too far from the shower, so that her needs were primary for
23 Zishe.

24 And the same thing after she was on a respirator in
25 2020 during the COVID pandemic. He took her into his home

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1 happily, you know, for months, and he's done the same thing
2 with her over and over again. So it's not just kind of a light
3 sort of in-law relationship. He has invested himself in the
4 care in the last few years, I think particularly since the time
5 the offense conduct ended. That's by virtue of his
6 reorientation of his life and also by virtue of the fact that,
7 since then, I think Zishe has really grown into the
8 responsibilities that have faced him, and he has met the
9 challenge. He's kind of the quintessential "sandwich
10 generation" that we hear a lot about — the person who's caring
11 for the children and caring for elderly family members — and
12 he has stepped into those responsibilities in the last few
13 years in a big way.

14 And it's not just he's been devoted to his family the
15 entire time, including during the time of the offense conduct.
16 His family needs him a lot more than it did five years ago, six
17 years ago, seven years ago, at the time of the offense conduct,
18 and he has met the moment, and he has invested himself in a way
19 that, frankly, takes up a lot of his time and a lot of his
20 energy. And he does it with the kind of joy that I think we
21 would all hope that any of our family members would do if we
22 faced the kinds of needs that Zishe's family members have.

23 Looking at what else Zishe has done in the last five
24 or six years, he has really taken a big step to invest in his
25 community. It's true that he comes from a close-knit

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1 community, many friends, and he was an active participant. But
2 what Zishe has done in the last just few years, I think, goes
3 well beyond what he ever did when he was a younger man. Most
4 notably, I'll say, is the — this past year Zishe took an EMT
5 certification course. It's not for any social opprobrium or
6 approbation, not for any praise in the community. He was in
7 the synagogue, and he noticed there are no EMTs in his
8 synagogue. You never know what's going to happen in a
9 gathering place, so he took it upon himself to invest hundreds
10 of hours into this EMT course so that he could be there if
11 somebody in his community needed him.

12 His EMT instructor wrote, I think, a really
13 extraordinary letter that told the Court not just that Zishe
14 was there to get a check mark, that he got his certification.
15 He brought his everything to that EMT course to make sure that,
16 when he was faced with life or death situations that EMTs face,
17 that he was really prepared. The EMT instructor, whose name is
18 Elazar Massarano told the Court Zishe was one of the top
19 performing students. From the first day, he stood out as a
20 student who came to class to learn and to participate. He
21 attended every class. He was not cutting any corners. He
22 always came prepared because he wanted to be prepared for the
23 real challenges that he's going to face when he's able to give
24 back to the community as an EMT.

25 He even devoted extra time because, understanding the

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1 importance of this work, he devoted extra time to help with the
2 struggling students, one of whom wrote a letter to the Court
3 and really credits — that letter-writer friend of Zishe's
4 really credits his ability to succeed in the course to gain his
5 certification to the help that Zishe gave him. So, you know, a
6 man with two young children and a full-time job and a lot of
7 responsibilities taking on this additional responsibility in
8 order to be able to put himself in the position to help his
9 community all the more, took that extra time to make sure that
10 other people who also wanted to give back were able to do so if
11 they needed that little extra help, a little extra time
12 studying, or things didn't come as easily to them.

13 I'll just note, in terms of what Zishe wants to do
14 with this certification, he's applied to volunteer with a
15 volunteer ambulance EMT organization, Hatzalah in Rockland
16 County. They have put his application in abeyance pending the
17 outcome of this case, but it's clear, just by the fact that
18 Zishe not only pursued it but he's actually trying to sign up
19 for a volunteer position, which I think is understandably
20 difficult for a person with a pending criminal charge, but he
21 has put that aside. He wrote letters to them explaining the
22 conduct in this criminal case. He's openly discussed with them
23 this case and accepted the shame of doing that, even as he's
24 trying to put himself in a position to do something — to do
25 something good for his community. I think that that is a

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1 really noteworthy thing that Zishe has done just in the last
2 year or so.

3 And the same is true of Zishe's work founding a
4 synagogue. The synagogue's in Zishe's Hasidic community, it's
5 not just a place of worship. It's not just a place people go
6 once a week or every once in a while in order to pray. It's
7 really the hub of community life. It's a place where people
8 make friends. It's the place where people go for advice. It's
9 the place where people go for help if they need it in the
10 community. It's really the center of the community life. And
11 when Zishe moved to his neighborhood where he lives in Rockland
12 County, he noticed that there was a big void. There was no
13 local synagogue in that particular neighborhood.

14 So rather than looking to somebody else to take on the
15 hard work of starting one, he himself took on the obligation of
16 trying to found this sort of community center where he and the
17 other — his neighbors could go in order to seek that sort of
18 social network and social support that comes with a synagogue.
19 And he worked, not just to found the synagogue, he imbued it
20 with a kind of ethos of openness. Some of the letter writers,
21 I think the rabbi of the synagogue who's here in court today to
22 support Zishe, wrote to the Court about how Zishe insisted that
23 this would be a synagogue that doesn't require membership dues,
24 which is very uncommon, so that way everybody would feel
25 welcome. There wouldn't be a kind of barrier of can I afford

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1 to really fully participate in this community?

2 And Zishe has already continued to foster a welcoming
3 and warm place in this synagogue. He has taken on the
4 volunteer position of coordinating the different prayer
5 positions and coordinating some of the charitable
6 contributions, which he does discreetly, and he also does just
7 because he knows how important it is having been the recipient
8 of community support at the time of this case. He personally
9 knows how important it is to have that community that's willing
10 to be your safety net when you need it most.

11 He has used the lessons that he's learned since the
12 offense conduct ended and since his indictment in order to
13 foster a more positive and welcoming and supportive place for
14 other people in his community. So I think those lessons are
15 really deeply learned within him, just in the last few years,
16 and he's put them to work.

17 Finally, the other, I think, really notable thing that
18 Zishe has done since the offense conduct, since he stopped the
19 offense conduct, is that he also stopped looking for shortcuts
20 in the business world. He has worked very hard in the last
21 several years to establish a legitimate business that's just
22 showing signs of real stability. He, obviously, had to start
23 over. His time selling for Amazon in any capacity, which is
24 what he did before the offense conduct. He previously had been
25 just a seller on Amazon. You know, you order toothpaste from

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1 this third party that — the buyer buys it directly from the
2 third-party seller, that had been his prior business, and then
3 the offense conduct occurred, and he totally shifted his focus
4 into a different kind of business and invested himself into
5 making — building a legitimate web design business, so
6 something totally different than what he was doing before.

7 And what his customers and community members who have
8 interacted with him in the business world noted in their
9 letters to the Court is that his entire attitude is different
10 in this business. He is trying to build things from the ground
11 up, hustling to find customers who need his services, providing
12 exceptional customer service to them, really meeting their
13 needs, doing the hard work of building a real business that is
14 now only finally beginning to achieve a modicum of financial
15 stability, which I think that is something for the Court to
16 consider in two ways: First, obviously, taking him away from
17 that business and that financial position that he's now trying
18 to build for his family would, obviously, be very disruptive in
19 terms of his family's financial ability to cope financially,
20 but also I think what he has done in his business shows how he
21 has transformed his life, how he has really changed over the
22 last several years.

23 Judge, all the while during this entire time frame,
24 while he's taking care of his family, while he's investing in
25 his community, while he's building his business, the other

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1 thing that Zishe has done that I think is really remarkable is
2 how he has openly accepted responsibility for his crime. He
3 has emphasized to anyone who will listen to him — his friends,
4 his neighbors, his community members, his business associates
5 — that his actions, what he did in this case, are a real
6 cautionary tale of what not to do in business.

7 THE COURT: Let me stop you there. I don't have
8 reason to disagree with anything you have said thus far, but
9 when you talk about a cautionary tale, right, as that relates
10 to deterrence, what kind of message would I be sending for
11 someone who is involved in defrauding a company of millions of
12 dollars — and not just over the course of a week or a month,
13 but years — what kind of message would I be sending to give
14 that person, as good a person as he may be and as good a
15 community member and husband and father — and, again, I don't
16 doubt any of that — but what kind of message would I be
17 sending if I give a non-incarceratory sentence?

18 MS. HARAMATI: Your Honor, I think that there is
19 something really to be said for the fact that Mr. Abraham has
20 internalized the gravity of his mistakes in a way that's
21 concrete. It's not just that he said "I'm sorry." It's that
22 — the offense conduct lasted, as far as I can tell,
23 approximately ten months based on the data and the spreadsheets
24 that we have gotten over the years, and he has taken the
25 positive steps, changed his life affirmatively over the last, I

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1 don't know, five or six years.

2 So I think that the message that the Court would send
3 is that you can do something bad; you have to repay for your
4 actions. He has a felony for the rest of his life that is
5 going to be a black mark on him. He has a giant forfeiture
6 judgment. I expect he's going to have an equally giant
7 restitution judgment. He has faced criminal prosecution over
8 the last four years, but I think that giving him — giving him
9 real credit for what he has done since shows that you can be a
10 positive model; that what you did in the past does not
11 necessarily determine your future. It gives people in his
12 position, criminal defendants, a real incentive to change their
13 life affirmatively and not just wait for the court to give them
14 a smack and tell them, sorry, you did bad. It gives people an
15 incentive to invest in themselves, to invest in their
16 community, to invest in their family, in order to build a new
17 life for themselves, knowing that that is the kind of thing
18 that we as a society want criminal defendants in Zishe's
19 position to do.

20 Your Honor, I cited this in our sentencing memo, but I
21 think that the way that Judge Chen in the Eastern District put
22 this in *United States v. Akiva Schonfeld*, which we quoted on
23 pages 24 and 25 of our sentencing memo, I think that she
24 distilled it in a really perfect way. What she said is "goal
25 of general deterrence can be served by factoring in a

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1 defendant's remorse, rehabilitation, and record of leading a
2 law-abiding and productive life postarrest." Defendants in the
3 same situation can take away the message from Mr. Schonfeld's
4 noncustodial sentence "that making good use of one's time
5 postarrest and leading a law-abiding and productive life will
6 benefit those defendants in the end and at the time of
7 reckoning."

8 I think Zishe Abraham is in exactly the same position
9 as that defendant. He has used his time productively, and I
10 think that giving him the credit that is due for the work that
11 he has done over the last five, six years shows a positive
12 model of deterrence. It shows you don't necessarily need a
13 harsh punishment in order to achieve deterrence. If a person
14 achieves deterrence in their own right by investing in
15 themselves, by getting on the straight and narrow, but taking
16 concrete steps, then that is what we want to do, and you won't
17 necessarily receive the same punishment. It's not just, you
18 know, a mitigating factor. I think that it shows that his
19 conduct has achieved the goals of federal sentencing.

20 So, for that reason I, think he's achieved specific
21 deterrence. He has achieved rehabilitation. I think he's
22 achieved respect for the law. Because having the law be
23 something that really considers a person where they are on the
24 day of sentencing, that also promotes respect for the law.
25 That it's not just a one size fits all and one-way ratchet for

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1 punishment promotes a real respect for the law as a humane
2 institution.

3 So I think that, for all of the reasons given and what
4 Mr. Abraham has done with his life over the last several years,
5 a noncustodial sentence, a time-served sentence is the right
6 sentence, is what is no greater than necessary for this person
7 who is coming before the Court today, not four years ago, not
8 five years ago, and not six years ago.

9 THE COURT: Thanks very much. Thank you.

10 I just want to turn back to the government for a
11 minute. Is the course of conduct just about ten months?

12 MS. KAMAL: Your Honor, I wish that I had today with
13 me my laptop so I could be looking at that spreadsheet with the
14 Court. I don't have that because my laptop is in the
15 possession of the United States Attorney's Office's IT
16 department.

17 THE COURT: OK.

18 MS. KAMAL: I want to say, your Honor, that there are
19 text messages that predate 2018 with respect to Mr. Zishe
20 Abraham. Unfortunately, I do not have that in front of me
21 here. But it is correct, if the Court is thinking about
22 relative culpability, that in their conversations, Mr. Yoel
23 Abraham held himself out as the person who had been doing this
24 the longest, who had been doing this for six years. There is
25 not the same representations made by Mr. Zishe Abraham, so he

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1 does not say I have been doing this for — I have been doing
2 this for many years.

3 I do know that he and the other codefendants all
4 talked about different ways they had evolved their deceptive
5 practices over time. And especially with respect to the fact
6 that Mr. Zishe Abraham engaged in product substitution so much,
7 that may be a source of determining when his offense conduct
8 began, but it is true that, based on the samples set forth in
9 the victim impact statement, that the bulk of his conduct was
10 in, I want to say, 2018, but as early as sort of December of
11 2017.

12 THE COURT: Thank you.

13 MS. KAMAL: That's my memory, without having the —

14 THE COURT: A couple months isn't going to make the
15 difference for me. I wanted to make sure I had a full
16 appreciation of all the facts.

17 MS. KAMAL: Yes, there's not the same representation
18 that was made from the defendant's own mouth, so to speak,
19 which was the case with Mr. Yoel Abraham.

20 THE COURT: Yes, Mr. Haramati.

21 MS. HARAMATI: I just want to give the Court an idea
22 of where I got the ten-month number from. The same spreadsheet
23 that we've been using to calculate the intended loss, I'm just
24 looking at the overage, the overage shipments that are used for
25 the intended loss, and it looks to me that the first

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1 overshipping was November 2017 and the last one was
2 September 2018. So that's, I think, at least the rough time
3 frame. So when you compare that to the last five or six years,
4 I think that that's the important metric. Whether it's a day
5 here or a day there, I don't think makes much of a difference.

6 THE COURT: Understood. Thank you.

7 Mr. Abraham, is there anything you'd like to say
8 today?

9 THE DEFENDANT: Yes. Judge Abrams, I come before you
10 today feeling so ashamed.

11 THE COURT: I'm sorry. If you can, just speak really
12 loudly and clearly and slowly, just so we can all hear you.
13 Thank you.

14 THE DEFENDANT: I come before you today feeling so
15 ashamed by my crimes and the position I put my family in. It
16 is hard for me to think about how my actions jeopardized my
17 family's future. I have two sweet and young children, Devory
18 and Shimon. Devory is 6 and Shimon is 4. They are my whole
19 world.

20 And I have the best wife, Zeldy. Zeldy gives the
21 children all the sweetness and attention that the mother can.
22 She has a heart of gold, but she can't do everything in her
23 own. She works hard with children with behavioral issues. She
24 can't do everything for everyone. There just are not enough
25 hours in the day for Zeldy to do her job so well and also care

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1 for young children without help.

2 Since we were blessed to become parents, Zeldy and I
3 have always shared our responsibilities as parents of two young
4 kids. I feel fortunate that I have the chance to be there to
5 take care of my kids every day. Every morning when they wake
6 up, it is my job to get them ready to school. I love hearing
7 about what they are looking forward to each day. I make sure
8 to come home on time every day because I know that the two kids
9 will be waiting for me. The kids want to tell me about their
10 friends and review their school lessons together.

11 I try to make even chores and lessons a positive
12 experience for the kids. I make a point to share with
13 attention and love the lessons that are learned in a hard and
14 painful way so that they can have a positive view of life, grow
15 up healthy, and develop emotionally. When I'm not working or
16 participating in community events, I'm with the kids. We have
17 so much fun together just singing songs and talking about
18 whatever the children are thinking about that day. My son,
19 Shimon, who is four, loves to tell me about his friends at
20 school and what activities they do. And Devory is growing into
21 such a sweet little girl, full of curiosity and creativity.

22 Being with them and helping them grow and develop each
23 day is my dream. My children are the light of my life. They
24 are a lot of work, but to me, raising my kids is the most
25 meaningful work I can do with my life.

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1 Your Honor, I am not here to make excuses. I did not
2 — I know I did wrong. I know I deserve punishment for my
3 crime. I should never have taken advantage of Amazon and taken
4 what is not mine. I'm so sorry for my actions. Honestly, I'm
5 scared, though. I spend my nights laying awake worrying that
6 Zelda won't be able to manage everything on her own — the
7 kids, the house, the bills, and all of the responsibilities.
8 It's just too much for one person. Zelda doesn't have too much
9 of a support system other than me. I can't stand to think
10 that, because of what I did, no one will be there for Zelda and
11 our precious children.

12 Since the terrible mistake I made with my Amazon
13 business, I've worked hard to build my new website design
14 business. After years of struggling to get it off the ground,
15 I finally have few steady clients and will make just enough
16 money with Zelda's salary that we can pay our bills on time and
17 care for Devory and Shimon without panicking at the end of
18 every month like we did for a number of years.

19 I feel terrible beyond description that I risked
20 everything. I risked my kids' stability and their future by my
21 own crimes. All I hope is I have a chance to be there for my
22 children, for my wife, and family, to take care of them and
23 support them every day. I know that's what my family needs.

24 Thank you for listening to me today.

25 THE COURT: Thank you, sir.

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1 Is there any reason why sentence cannot be imposed at
2 this time?

3 MS. KAMAL: No, your Honor.

4 MS. HARAMATI: No, your Honor.

5 THE COURT: I am required to consider the advisory
6 guidelines range, as well as various other factors that are
7 outlined in a provision of the law that I mentioned earlier.
8 It's 18 United States Code, Section 3553(a). And I have done
9 so. Those factors include but are not limited to the nature
10 and circumstances of the offense and the personal history and
11 characteristics of the defendant, because every defendant must
12 be considered individually as a person.

13 Judges are also required to consider the need for the
14 sentence imposed to reflect the seriousness of the offense,
15 promote respect for the law, provide just punishment, afford
16 adequate deterrence to criminal conduct, protect the public
17 from future crimes of the defendant, and avoid unwarranted
18 sentencing disparities, among other things.

19 As I said at the sentencing of your brother Yoel, you
20 and your three brothers participated in a very elaborate and
21 brazen scheme to defraud. You intentionally and extensively
22 overshipped items on purchase orders, at times in the
23 thousands, causing Amazon to pay for goods it had never
24 ordered. You also engaged in unit manipulation where you would
25 substitute a multipack unit with a single item. Throughout the

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1 course of the conspiracy, through group texts, you and your
2 codefendants repeatedly discussed how to evade detection by
3 Amazon. And when Amazon detected overshipping, you advised
4 your brother to apologize and blame it on warehouse mistakes.
5 You even went so far as to suggest bribing an Amazon employee
6 or hacking their systems, and your motivation for doing so was
7 simple: It was greed. In your own words, to make the
8 millions.

9 I do appreciate, and I think it really matters, that
10 at times you expressed hesitancy about engaging in this kind of
11 fraud, a desire to build a legitimate business. Unfortunately,
12 you didn't do that. So I've considered the nature of that
13 crime, as I must.

14 I have also considered who Mr. Abraham is as a person.
15 He is — are you 33 or 34 now?

16 THE DEFENDANT: 34.

17 THE COURT: 34.

18 He has no other criminal history. He has no history
19 of violence of any sort. He's married. I've heard a lot and I
20 read, of course, a lot about all of the help and support and
21 care that you give not just to your children and your wife but
22 your extended family and your community, including by
23 volunteering as an EMT, having assisted in opening the
24 synagogue where you let people in without having to pay.

25 I am cognizant of the financial and emotional hardship

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1 that your family will face in your absence. I do think, as
2 your lawyer noted, all of this presentence rehabilitation is
3 really relevant. We want people to do that. We want people to
4 change. And I do think that your actions have shown that you
5 appreciate the seriousness of the offense, that you're not
6 likely to recidivate, that you do — at least now, you didn't
7 before — but that you do now have a respect for the law. So
8 all of that really matters.

9 I know that you're scared and, as you noted in your
10 letter, that you fear for your children and your future and
11 your wife, and I understand all of that. Sadly, it's often the
12 case that it is the family members of a defendant who suffer
13 the most from the consequences of criminal conduct. And I
14 read, as I said, all the letters from your loved ones. I know
15 you share this close relationship. So I have thought about all
16 of that, all of your efforts towards rehabilitation, who you
17 are as a person, and everything I already mentioned.

18 But I also have to impose a sentence that reflects the
19 seriousness of the offense, that does promote respect for the
20 law, not just to you but to the world more broadly, that
21 provides just punishment and, I think critically, that deters
22 not just you but others from engaging in similar conduct. So,
23 ultimately, I have considered all of that.

24 I have also considered, as we talked about at length,
25 the need to avoid unwarranted sentencing disparities. It

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1 appears that Mr. Abraham is the least culpable or equally less
2 culpable, with one of his brothers, than the others, both in
3 terms of the amount of money of the intended loss, but I think,
4 more importantly, his hesitancy, because, again, what that
5 shows to me is he wanted to do the right thing. He didn't do
6 it. He didn't have the strength to do it. He let greed take
7 over. But I think that means that you're less likely to
8 recidivate.

9 So I've considered all that. Ultimately, while I
10 agree with both probation and the defendant that a variance, a
11 downward variance, is appropriate here, I also agree with the
12 government and probation that a prison sentence is warranted,
13 given the egregiousness of the conduct and the importance of
14 deterrence in a case like this.

15 So I am going to ask you to stand, Mr. Abraham, while
16 I impose sentence.

17 It is the judgment of this Court that you be committed
18 to the custody of the Bureau of Prisons for a term of 15
19 months, to be followed by a term of supervised release of three
20 years. I believe that this sentence is sufficient but not
21 greater than necessary to comply with the purposes of
22 sentencing set forth in the provision of the law I mentioned,
23 18 United States Code, Section 3553(a).

24 You can be seated if you'd like while I read the other
25 conditions of your release.

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1 Before I do that, I wanted to note a couple of things.
2 First of all, I want to note I would have imposed the exact
3 same sentence even if I had adopted the guidelines range in the
4 plea agreement, so I want that to be clear.

5 I also want to be clear that this sentence is
6 consistent with other sentences imposed in this district, in
7 fact, a little bit below according to the search I did on the
8 sentencing commission's publicly available interactive website.
9 That data indicated that for offenses where 2B1.1 is the
10 primary guideline and where the defendant was in a sentencing
11 zone of D and had a criminal history category of I, the average
12 length of imprisonment in this district was 28 months,
13 significantly higher than the sentence I imposed, and the
14 median was 20 months, so closer. But, again, my sentence was a
15 little bit lower here.

16 There was then an average supervised release period of
17 33 months and a median of 36. Here, the supervised release
18 term will be that median of 36 months, and that data comes from
19 176 cases. Part of the reason I am varying downward to the
20 degree that I am are just all of the reasons that your lawyer
21 so eloquently noted: That your rehabilitation, that your
22 efforts to change your life, to help your community have really
23 shown that you appreciate the harm that you caused and that you
24 are not likely to recidivate. So that all really mattered to
25 me, and I want to send that message, as well as the one that

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1 there will be serious consequences if you engage in a crime as
2 serious as this one.

3 So with respect to your supervised release, you'll be
4 on supervised release for three years. The standard conditions
5 of supervised release are on pages 33 and 34 of the presentence
6 report. I'm happy to read them out loud, but if you waive
7 their public reading, I won't read them out loud.

8 But I just want to get your assurance that you'll go
9 over them at length with Mr. Abraham.

10 MS. HARAMATI: Yes, Judge, we will go over them, and
11 we waive the public reading.

12 THE COURT: With respect to the mandatory conditions
13 on page 32 and top of 33, do you also waive their public
14 reading?

15 MS. HARAMATI: Yes, Judge.

16 THE COURT: OK. But they are all imposed.

17 I am going to read the special conditions recommended
18 by the probation department, which I think are applicable in
19 this case.

20 Number one, you must provide the probation officer
21 with access to any requested financial information, and you
22 must not incur new credit card charges or open additional lines
23 of credit without the approval of the probation officer unless
24 you are in compliance with the installment payment schedule. I
25 am imposing both of these special conditions because there is

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1 going to be a large forfeiture order, consistent with your
2 agreed-upon order, and there may well be a hefty restitution
3 order as well. But even if there isn't, on the restitution
4 front, you're going to have serious financial consequences as a
5 result of this.

6 In addition, you shall submit your person, any
7 property, residence, vehicle, papers, computer, other
8 electronic communications, data storage devices, cloud storage
9 or media and effects to a search by any United States probation
10 officer and, if needed, with the assistance of law enforcement.
11 The search is to be conducted when there is reasonable
12 suspicion concerning violation of a condition of supervision or
13 unlawful conduct by the person being supervised. Failure to
14 submit to a search may be grounds for revocation of release.
15 You shall warn any other occupants that the premises may be
16 subject to searches pursuant to this condition. Any search
17 shall be conducted at a reasonable time and in a reasonable
18 manner. I'm imposing this special condition in light of the
19 nature of the crime, particularly the way that computers were
20 used. And you will be supervised in the district of your
21 residence.

22 All right. I'm imposing the mandatory special
23 assessment of \$100, which shall be paid immediately.

24 I am ordering restitution, but I'm reserving judgment
25 on the amount. I'm going to refer the amount of restitution to

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1 Magistrate Judge Aaron for recommendation. To be clear, the
2 referral is only for a recommendation. You'll have the
3 opportunity to object to the recommendation, which I will
4 review. So you should see a referral order on the docket later
5 today.

6 Then with respect to restitution, I notice, I think,
7 that the forfeiture order was a little bit different in amounts
8 than the plea agreement. Is that possible? I was going to
9 refer to the restitution order.

10 I have the consent preliminary order of forfeiture —
11 sorry, I misspoke. My deputy just told me I said restitution.
12 I mean forfeiture. Excuse me for that.

13 But with respect to the forfeiture amount, it seemed
14 like the figures were a little bit different, in part, from the
15 plea agreement. So I'm relying on the amounts in the consent
16 preliminary order of forfeiture, money judgment.

17 MS. KAMAL: If I may briefly, your Honor?

18 THE COURT: Yes, please.

19 MS. KAMAL: I see no difference between —

20 THE COURT: They're not. OK.

21 MS. KAMAL: In the plea agreement on page 2, very top
22 of the page, the left-hand corner, there's the imposition of a
23 money judgment equal to \$967,696.

24 THE COURT: OK.

25 MS. KAMAL: And on the first page of the consent

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1 preliminary order of forfeiture, which was entered at the same
2 time, the defendant agreed to forfeit a sum of money equal to
3 967,696. I think what the Court may be referring to —

4 THE COURT: \$500,000, was that figure — let me just
5 get the plea agreement out. I have the forfeiture order in
6 front of me.

7 (Discussion off the record)

8 THE COURT: In any event, go on, please.

9 MS. KAMAL: I just wanted to say, your Honor, the plea
10 agreement contemplates, and the parties agreed to, the
11 imposition of a money judgment of, as I just said, that figure
12 of \$967,696. That is the same amount reflected in the third
13 paragraph, the third "whereas" paragraph, in the consent
14 preliminary order of forfeiture. I think the confusion here
15 may be that the defendant has consented to the money judgment,
16 which is the total amount owed in forfeiture, but there was
17 specific property seized prior, at the time of arrest, and so
18 the forfeiture order and the plea agreement contemplate and the
19 parties agree to the defendant waiving any claim to that
20 specific property.

21 THE COURT: I think what threw me off was the language
22 of the up to \$500,000, for example, held in JPMC bank account
23 — and I'm not going to read the number — and then up to
24 500,000 in a different bank account, and the figures on page 2
25 of the preliminary order of forfeiture were over \$650,000 from

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1 one bank account and then significantly less in another one.
2 That's just what threw me off.

3 The only point I meant to say was I want to confirm
4 that you all agree that there's no disagreement that forfeiture
5 should be entered in the amount in the consent preliminary
6 order of forfeiture.

7 MS. KAMAL: That's correct, your Honor.

8 MS. HARAMATI: Yes, your Honor. Just to make sure
9 that it's totally clear —

10 THE COURT: Yes.

11 MS. HARAMATI: — the entire amount of the forfeiture
12 is this \$967,696, and the amount that was seized goes towards
13 — the \$822,563.12 that was seized in total from those two bank
14 accounts referenced goes towards that 906-some-odd-thousand
15 forfeiture judgment.

16 THE COURT: All right. For purposes of the record
17 today, I am ordering forfeiture in the amount of \$967,696 in
18 United States currency, which shall include the specific
19 property mentioned in the consent preliminary order of
20 forfeiture, and I'm incorporating the entirety of this
21 forfeiture order into my judgment.

22 All right. Why don't we talk about a surrender date
23 and any recommendations you have with respect to a facility
24 before I read Mr. Abraham his appellate rights. So usually it
25 will be about 60 days, but what would you propose?

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1 MS. HARAMATI: May I just confer with my client?

2 THE COURT: Sure.

3 (Counsel conferred with defendant)

4 MS. HARAMATI: Your Honor, to allow Mr. Abraham to
5 stay out for the Jewish holidays and also to celebrate Hanukkah
6 with his family, we'd ask for a report date of January 6, 2025,
7 and I'd also ask the Court to recommend designation at the
8 satellite camp at FCI Otisville.

9 THE COURT: Where? Sorry.

10 MS. HARAMATI: The FCI Otisville camp.

11 THE COURT: Yes. So you will surrender for your
12 sentence on January 6, 2025. I'll make that recommendation
13 with respect to FCI Otisville, but, as you know, it's
14 ultimately up to the Bureau of Prisons. So you are to report
15 there by 2 p.m., to wherever you're designated. Not there, but
16 wherever you're designated by the Bureau of Prisons by 2 p.m.
17 on that date.

18 I should note that it is no longer the case that
19 people report to the MDC. So if, for some reason, you don't
20 get that designation in advance, I'm just going to ask the
21 lawyers just to reach out to the Bureau of Prisons and the
22 government as soon as possible about that.

23 All right. Does either counsel know of any legal
24 reason why I cannot impose this sentence?

25 MS. KAMAL: No, your Honor.

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1 MS. HARAMATI: No, Judge.

2 THE COURT: All right. That's the sentence of this
3 Court. You have a right to appeal your conviction and sentence
4 except to whatever extent you may have validly waived that
5 right as part of your plea agreement. If you do choose to
6 appeal, the notice of appeal must be filed within 14 days of
7 the judgment of conviction. If you are not able to pay the
8 cost of an appeal, you may apply for leave to appeal *in forma*
9 *pauperis*, which simply means that court costs, such as filing
10 fees, will be waived. If you request, the clerk of court will
11 prepare and file a notice of appeal on your behalf.

12 Does the government move to dismiss the underlying
13 indictment and any open counts?

14 MS. KAMAL: Yes, your Honor.

15 THE COURT: All right. They'll be dismissed.

16 Mr. Abraham, I said this to your brother, and I often
17 say it at sentencing. I don't think people need to be defined
18 by the worst mistakes they've ever made. You don't need to be
19 defined exclusively by this conduct. You will be defined by a
20 lot more, and you already are, just looking around this
21 courtroom, seeing how many members of your community are here
22 to support you, having read all of the letters from so many of
23 your loved ones who talk about you in such glowing terms as
24 empathetic and diligent and sensitive and generous and loving
25 and a dedicated family man.

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1 But it's really going to be up to you to continue to
2 define yourself, and I hope you do it in a way that you have
3 articulated you want to, and I believe you're going to, for the
4 remainder of your life. I hope you've learned something from
5 this experience and move forward in a positive, law-abiding
6 fashion. I wish you luck with that.

7 Are there any other applications at this time?

8 MS. KAMAL: No, your Honor. Thank you.

9 MS. HARAMATI: Nothing further, Judge.

10 THE COURT: We're adjourned. Thank you.

11 (Adjourned)
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